

# ARKANSAS SUPREME COURT

No. CR 09-89

CARROLL G. JOHNSON  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered April 16, 2009

PRO SE MOTION FOR RULE ON  
CLERK [CIRCUIT COURT OF  
PULASKI COUNTY, CR 2005-4243, CR  
2005-4556, HON. CHRIS PIAZZA,  
JUDGE]

MOTION DENIED.

## PER CURIAM

In 2008, petitioner Carroll G. Johnson, in a trial to the bench, was convicted of sexual indecency with a child, indecent exposure, and carrying a weapon. In separate judgments, petitioner received a sentence of seventy-two months' imprisonment on the indecency charge and an aggregate sentence of twelve months' imprisonment on the remaining two charges. The Arkansas Court of Appeals affirmed the judgments. *Johnson v. State*, CACR 07-659 (Ark. App. Feb. 27, 2008). The mandate issued on March 18, 2008, and on June 12, 2008, petitioner filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1. On July 8, 2008, the trial court denied the petition as untimely filed.

On July 23, 2008, petitioner filed in the trial court a notice of appeal that was timely, but petitioner did not tender the record to this court until November 13, 2008. Our clerk correctly declined to lodge the record because it was tendered outside of the ninety-day limit set in Arkansas Rule of Appellate Procedure--Civil 5(a), as applied through Arkansas Rule of Appellate Procedure--Criminal 4(a). Petitioner brings this motion for rule on clerk, seeking to proceed with the appeal.

We need not consider petitioner's motion or stated cause for the delay in lodging the record, however, because it is clear from the partial record before us that petitioner could not prevail on appeal, were we to permit the appeal to proceed. An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). Here, it is clear that petitioner's Rule 37.1 petition was, as the trial court found, not timely filed and the trial court could not address the merits of the petition.

Where the judgment was appealed, Arkansas Rule of Criminal Procedure 37.2(c) requires that the petition for postconviction relief must be filed within sixty days of the date the mandate issued. Here, petitioner filed his petition in the trial court eighty-six days after the mandate issued. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). The trial court could not consider an untimely petition, and petitioner could not prevail were we to grant permission for an appeal to go forward. We therefore deny the motion for rule on clerk.

Motion denied.